



## Intellectual Property Rights

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### What are Intellectual Property Rights?

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- Intellectual property rights (IPR) are the rights given to persons over the creations of their minds: inventions, literary and artistic works, and symbols, names and images used in commerce. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.
- These rights are outlined in **Article 27 of the Universal Declaration of Human Rights**, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.
- The importance of intellectual property was first recognized in the **Paris Convention for the Protection of Industrial Property (1883)** and the **Berne Convention for the Protection of Literary and Artistic Works (1886)**. Both treaties are administered by the **World Intellectual Property Organization (WIPO)**.

**Intellectual property rights are customarily divided into two main areas:**

#### **(i) Copyright and rights related to copyright:**

The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, **for a minimum period of 50 years after the death of the author.**

#### **(ii) Industrial property:** Industrial property can be divided into two main areas:

- **Protection of distinctive signs**, in particular **trademarks and geographical indications**.
  - **Trademarks** distinguish the goods or services of one undertaking from those of other undertakings.
  - **Geographical Indications (GIs)** identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin.
  - The protection of such distinctive signs aims to **stimulate and ensure fair competition and to protect consumers**, by enabling them to make informed choices between various goods and services.
  - The protection **may last indefinitely**, provided the sign in question continues to be distinctive.
- **Industrial designs and trade secrets**: Other types of industrial property are protected primarily to **stimulate innovation, design and the creation of technology**. In this category fall inventions (protected by **patents**), **industrial designs** and **trade secrets**.

## What is the need of IPR?

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The progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture.

- **Encourages innovation**: The legal protection of new creations encourages the commitment of additional resources for further innovation.
- **Economic growth**: The promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.
- **Safeguard the rights of creators**: IPR is required to safeguard creators and other producers of their intellectual commodity, goods and services by granting them certain time-limited rights to control the use made of the manufactured goods.
- It promotes innovation and creativity and **ensures ease of doing business**.
- It **facilitates the transfer of technology** in the form of foreign direct investment, joint ventures and licensing.

## India and IPR

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- India is a member of the World Trade Organisation and committed to the Agreement on **Trade Related Aspects of Intellectual Property (TRIPS Agreement)**.
- India is also a member of World Intellectual Property Organization, a body responsible for the promotion of the protection of intellectual property rights throughout the world.

- India is also a member of the following important **WIPO-administered International Treaties and Conventions relating to IPRs**.
  - Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
  - Paris Convention for the Protection of Industrial Property
  - Convention Establishing the World Intellectual Property Organization
  - Berne Convention for the Protection of Literary and Artistic Works
  - Patent Cooperation Treaty
  - Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks- Madrid Protocol
  - Washington Treaty on Intellectual Property in respect of Integrated Circuits
  - Nairobi Treaty on the Protection of the Olympic Symbol
  - Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
  - Marrakesh Treaty to facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities.

## National IPR Policy

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- The National Intellectual Property Rights (IPR) Policy 2016 was adopted in May 2016 as a vision document to guide future development of IPRs in the country.
- It's clarion call is "**Creative India; Innovative India**".
- It encompasses and brings to a single platform all IPRs, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies.
- It sets in place an **institutional mechanism for implementation**, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.
- **Department of Industrial Policy & Promotion (DIPP)**, Ministry of Commerce, Government of India, has been appointed as the **nodal department** to coordinate, guide and oversee the implementation and future development of IPRs in India.
- The '**Cell for IPR Promotion & Management (CIPAM)**', setup under the aegis of DIPP, is to be the **single point of reference** for implementation of the objectives of the National IPR Policy.
- India's IPR regime is in compliance with the WTO's agreement on **Trade-Related Aspects of Intellectual Property Rights (TRIPS)**.

## Objectives

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- **IPR Awareness: Outreach and Promotion** - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
- **Generation of IPRs** - To stimulate the generation of IPRs.
- **Legal and Legislative Framework** - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.

- **Administration and Management** - To modernize and strengthen service-oriented IPR administration.
- **Commercialization of IPRs** - Get value for IPRs through commercialization.
- **Enforcement and Adjudication** - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- **Human Capital Development** - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

## Achievements under new IPR policy

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- **Improvement in GII Ranking:** India's rank in the **Global Innovation Index (GII)** issued by WIPO has improved from 81st in 2015 to 52nd place in 2019.
- **Strengthening of institutional mechanism** regarding IP protection and promotion.
- **Clearing Backlog/ Reducing Pendency in IP applications:** Augmentation of technical manpower by the government, has resulted in drastic reduction in pendency in IP applications.  
Automatic issuance of electronically generated patent and trademark certificates has also been introduced.
- **Increase in Patent and trademark Filings:** Patent filings have increased by nearly 7% in the first 8 months of 2018-19 vis-à-vis the corresponding period of 2017-18. Trademark filings have increased by nearly 28% in this duration.
- **IP Process Re-engineering** Patent Rules, 2003 have been amended to streamline processes and make them more user friendly. Revamped Trade Marks Rules have been notified in 2017.
- **Creating IPR Awareness:** IPR Awareness programs have been conducted in academic institutions, including rural schools through satellite communication, and for industry, police, customs and judiciary.
- **Technology and Innovation Support Centres (TISCs):** In conjunction with WIPO, TISCs have been established in various institutions across different states.

## Issues in India's IPR regime

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- **Section 3(d) of the Indian Patent Act 1970 (as amended in 2005)** does not allow patent to be granted to inventions involving new forms of a known substance unless it differs significantly in properties with regard to efficacy.
  - This means that the Indian Patent Act **does not allow evergreening of patents**.
  - This has been a cause of concern to the pharma companies. Section 3(d) was instrumental in the Indian Patent Office (IPO) **rejecting the patent for Novartis' drug Glivec** (imatinib mesylate).

- **Issue of Compulsory licencing (CL):** CL is problematic for foreign investors who bring technology as they are concerned about the misuse of CL to replicate their products. It has been impacting India-EU FTA negotiations.
  - CL is the **grant of permission by the government to entities** to use, manufacture, import or sell a patented invention without the patent-owner's consent. Patents Act in India deals with CL.
  - CL is **permitted under the WTO's TRIPS (IPR) Agreement** provided conditions such as 'national emergencies, other circumstances of extreme urgency and anti-competitive practices' are fulfilled.
- India continues to remain on the United States Trade Representative's (USTR's) **'Priority Watch List'** for alleged **violations of intellectual property rights (IPR)**. In its latest **Special 301 report** released by the United States Trade Representative (USTR), the US termed India as "one of the world's most challenging major economies" with respect to protection and enforcement of IP.
- **Data Exclusivity:** Foreign investors and MNCs allege that Indian law does not protect against unfair commercial use of test data or other data submitted to the government during the application for market approval of pharmaceutical or agro-chemical products. For this they demand a Data Exclusivity law.
- **Enforcement of the Copyright act is weak**, and piracy of copyrighted materials is widespread.

## Way Forward

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- Promoting an environment of innovations in schools. The academic curricula need to be rebooted.
- A proper resolution mechanism for resolving IPR related issues is needed.
- India will be unable to take full advantage of the transformative benefits of a strong IP system unless and until it addresses gaps in its IP laws and regulations.
- Success of India's flagship programmes - **Make in India** and **Start up India** - depends on the boost of innovation ecosystem with better IPR safeguardings.  
More awareness is needed about the creation, protection and enforcement of IPRs to encourage the Indian industry not only to innovate but also to protect and enforce their innovations.

## Conclusion

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- India has made a number of changes in its IPR regime to increase efficiency and has cut down the time required to issue patents. The culture of innovation is taking centre stage in the country. India is well poised to focus on R&D. This has been reflected in its improved ranking in **Global Innovation Index** over the years.
- Government's effort to strengthen National IPR policy, IP appellate tribunal, e-governance and commitment to abide by the TRIPS agreement of WTO in letter and spirit will help in improving perception of India globally.

- An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social & cultural well-being.

*For Mind Map*